88-1968

Supreme Court, U.S.
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No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1988

Walter J. Moeller, pro se

Petitioner

-v.-

United States Government, et al

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

WALTER J. MOELLER, PRO SE
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QUESTIONS PRESENTED

1. Whether public servant employees of the Internal Revenue Service are absolutely immune from civil liability where they flagrantly violate IRS regulations, engage in criminal conduct, conspire to deprive sovereign citizens of their constitutional rights, and assess and collect taxes by lien and levy which they know are not owed, all under color of law.

2. Whether an order of the District Court dismissing with prejudice all the individuals and issues pertaining thereto is a final order appealable to the Court of Appeals under Title 28 U.S.C. § 1291.

3. Whether the District Court retain authority and jurisdiction over persons and issues which have been dismissed with prejudice and which order is on appeal.

4. Whether Title 28 U.S.C. Rule 41 can be used to deny me my constitutional rights on the basis of a void order.

5. Whether a plaintiff can be denied his constitutional rights where the court deliberately and maliciously makes false statements in the court order.

THE PARTIES

The parties required to be listed pursuant to Rule 21.1(b) and 28.1 are contained in the appendix at page 67a.

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October Term, 1988

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-v.-

United States Government, et al

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

I, Walter J. Moeller pro se, not a lawyer, respectfully petitions this court for a writ of certiorari to review the final judgment of the district court and the Court of Appeals for the Eighth Circuit dismissing my appeal by order dated February 1, 1989 and my petition for rehearing by order dated March 17, 1989.

OPINIONS BELOW

None of the orders or opinions of the courts below have been published.

The orders and opinions of the U.S. District Court are as follows:

a. Court order and opinion dated July 21, 1987 contained in the appendix as Exhibit A at page 1a.

b. Court order dated February 8, 1988 contained in the appendix as Exhibit B at page 5a.

c. Court order and opinion dated February 19, 1988 contained in the appendix as Exhibit C at page 7a.

d. Court order dated March 28, 1988 contained in the appendix as Exhibit D at page 14a.

The orders and opinions of the U.S. Court of Appeals are listed as follows:

a. Court order dated August 21, 1987 contained in the appendix as Exhibit E at page 17a.

b. Court order dated August 19, 1988 contained in the appendix as Exhibit F at page 20a.

c. Court order dated September 22, 1988 contained in the appendix as Exhibit G at page 21a.

d. Court order dated October 19, 1988 contained in the appendix as Exhibit H at page 24a.

e. Court order dated November 2, 1988 contained in the appendix as Exhibit I at page 28a.

The judgments and opinions of the court of appeals (case 87-5089, 88-1782WA) to be reviewed by this court was entered on February 1, 1989 and is contained in the appendix as Exhibit J at page 29a. Petition for rehearing by panel and suggestion for rehearing en banc was timely filed with the Court of Appeals on February 10, 1989. The order of the Court of Appeals dated March 17, 1989 contained in

the appendix as Exhibit K at page 38a denied my petition for rehearing.

JURISDICTION

The Supreme Court has jurisdiction to review judgments of the U.S. District Court and the U.S. Court of Appeals pursuant to Title 28 U.S.C. § 1254(1).

The Supreme Court has a mandate by the Constitution and the judge's oath of office to review, as of right, all cases in which rights of the plaintiff, secured by the Constitution and the Bill of Rights, have been violated and/or denied.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(The titles only are listed below. The complete text or the pertinent parts thereof are contained in the appendix at the pages indicated).

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TITLE 42 U.S.C. § 1986
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STATEMENT OF THE CASE

This petition arises from a decision of the U.S. Court of Appeals affirming the District Court's dismissal of my complaint, without hearing or receiving

any evidence, in which I sought to recover money unlawfully assessed and collected by lien and levy against my army retired pay and my social security benefits.

On July 14, 1987 I filed a complaint in the U.S. District Court against the U.S. Government and certain public servant employees of the Internal Revenue Service to recover money that had been unlawfully assessed and collected for the years 1980 and 1981. In the complaint I alleged that the public servant employees of the Internal Revenue Service totally disregarded the audit and administrative procedures mandated by the IRS regulations and that the public servant employees of the IRS engaged in a criminal conspiracy to deprive me of my property for taxes that I did not owe and deprive me of my constitutional rights, all under color of law.

On July 21, 1987, the District Court, sua sponte, dismissed with prejudice all the named individuals in my complaint and all the issues pertaining thereto without hearing or receiving any evidence. (See Appendix Exhibit A at page 1a).

I made a timely appeal of this order of the District Court to the U.S. Court of Appeals.

On September 1, 1987 I filed a motion in the U.S. District Court under the provisions of Title 28 U.S.C.§ 144 and 455 to disqualify Judge H. Franklin Waters because of his bias and prejudice against all pro se plaintiffs and because of favoritism towards the U.S. Government and public servant employees,

On February 19, 1989 the District Court, (Judge H. Franklin Waters) issued an order and memorandum opinion (see Appendix Exhibit C at page 7a) in which my motion to disqualify Judge Waters was

denied. The order further stated that the court order of July 21, 1987 dismissing with prejudice the individuals listed in my complaint was not a final order. The court further ordered me to amend my complaint so as to eliminate all the individuals dismissed with prejudice in the July 21, 1987 order and which was on appeal and docketed in the Appeals Court at that time.

When I objected to this order, Judge Waters dismissed with prejudice my complaint as authorized under the provisions of Title 26 U.S.C. § 7422 against the U.S. Government for the recovery of money unlawfully assessed and collected by distraint and which I did not owe. (See order dated March 28, 1988 Appendix Exhibit D at page 14a).

The Appeals Court sustained the District Court's order by order dated February 1, 1989. (Appendix Exhibit J at

page 29a). My petition for rehearing and suggestion for rehearing en banc was denied by order dated March 17, 1989. (Appendix Exhibit K at page 38a).

This is a demand for review by the Supreme Court of this case to protect and defend my rights secured by the U.S. Constitution which have been flagrantly violated and/or denied by both the public servant employees of the Internal Revenue Service and the courts below.

ARGUMENT

I

PUBLIC SERVANT EMPLOYEES OF THE IRS ARE NOT ABSOLUTELY IMMUNE FROM LIABILITY FOR THEIR CRIMINAL ACTS AND THE TOTAL DISREGARD FOR THEIR RULES AND PROCEDURES.

Judge Waters erred when he stated in his letter opinion dated July 21, 1987, (Appendix A at page 1a). "the cases and statutes which hold that employees of the Internal Revenue Service may not be

individually sued are almost too numerous to list." This statement is in error and is in direct conflict with Butz v. Economou, 438 US 478 (1978, Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 US 388 (1971), Nixon v. Fitzgerald, 457 US 731 (1982), Marbury v. Madison, 5 US 137, (1803), and Harlow v. Fitzgerald, 457 US 800.

Judge Waters further states in his Letter Opinion: "A suit or proceeding referred to in subsection (a) may be maintained only against the United States and not against any officer or employee of the United States (or former officer or employee) or his personal representative." This is a false statement made by Judge Waters. Section 7422 does not contain such a statement. Section a, (Appendix at pages 58a and 59a), referred to by Judge Waters pertains to the recovery of Internal

Revenue tax unlawfully collected. My complaint was against the Government for the recovery of the money which was unlawfully assessed and collected. My complaint against the public servant employees of the IRS was for damages suffered by me as a result of their unlawfully acts, the total disregard for the IRS rules and regulations and for their violation of my constitutional rights in collecting money that I did not owe by lien and levy. Suits against agents of the IRS for damages are specifically authorized by Title 26 U.S.C. § 7214, last sentence thereof, (Appendix at page 57a and 58a), which is quoted in part as follows:

> ". . . . The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution."

The Supreme Court cases quoted above support this contention, contrary to the

opinion of the judge

Judge Waters has denied me my constitutional rights under Amendment I, (appendix at page 52a), right to petition my government for redress of grievances, Amendment V, (appendix at page 52a), due process, Amendment VII, (appendix at page 53a), trial by jury. Nowhere in the Constitution does it grant a judge the authority or jurisdiction to deny me my constitutional rights. My rights as retained by "The people" as set forth in Amendments IX and X have been violated by Judge Waters arbitrary dismissal of my complaint. (Appendix at page 53a).

Judge Waters was required to take an oath of office by Article VI of the U.S. Constitution, (appendix at page 51a), and Title 28 U.S.C. § 453. (Appendix at page 62a). Judge Waters has violated his oath of office by his order and Letter Opinion dated July 21, 1987, (Appendix Exhibit A

at page 1a).

The public servant employees of the IRS violated their own regulations in the assessment and collection of taxes which I did not owe. I was not provided with the 30 day letter as required by IRS Rule 301.6203-1 (Appendix at page 59a), nor did the IRS agents comply with Rules 601.101, 601.102, 601.103, 601.105 and 601.106, (Appendix at pages 59a - 62a). I was not afforded an opportunity to protest any of the unlawful assessments in accordance with the administrative procedures which the IRS is required to follow as set forth in their rules and regulations as quoted above. The court's attention is particularly directed to Rule 1 of these regulations which is quoted in pertinent part as follows:

> § 601.106(f)(1) Rule I, (Appendix at page 62a).
> An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth

> Amendment to the U.S. Constitution. Accordingly, an Appeals representative in his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

The public servant employees of the IRS violated criminal statutes in their action of assessing and collecting money which I did not owe by lien and levy as set forth in Title 18 U.S.C. § 4, knowledge of a crime, (appendix at page 54a), § 241, conspiracy, (appendix at page 54a), § 242, deprivation of rights under color of law, (appendix at page 54a), § 872, extortion, (appendix at page 55a), § 1001, falsifying documents, (appendix at page 55a), § 1018, false certificates, (appendix at page 56a), § 1621, perjury, (appendix at page 56a), and § 1622, subornation of perjury, (appendix at page 56a).

The IRS agents also violated statutes under Title 26 U.S.C., more specifically § 7214, collecting more taxes than are due, (appendix at page 57a). This form of criminal act is specifically proven by the fact that I was eventually refunded the sum of $467.45 which was over collected by lien and levy over and above the false and fraudulent assessment made by the IRS (see order dated July 22, 1987, appendix Exhibit A at page 1a).

The IRS agents totally disregarded their own administrative procedures as set forth in their rules and regulations in the assessment and collection of taxes by lien and levy which I did not owe. I was deprived of my money and my constitutional rights as a direct result of the IRS agents disregard of their required administrative procedures. I was thus denied my constitutional right under the First Amendment to petition my

government for redress of grievance, (appendix at page 52a), and my rights under the Fifth Amendment of due process, (appendix at page 52a). The confiscation of my money by lien and levy which I did not owe violated my constitutional rights under the Fourth Amendment, "the right to be secure," (appendix at page 52a), my Fifth Amendment right of due process, (appendix at page 53a), and my Seventh Amendment right of trial by jury, (appendix at page 31a). The IRS agents made false accusations and levied fines which are criminal sanctions in violation of my constitutional rights under Amendment VI which grants me the right to public trial by jury, (appendix at page 53a).

The imposing a fine by acting as accuser, prosecutor, judge and jury by the agents of the IRS usurped the power and jurisdiction of the judicial branch

of government and also violated my VIII Amendment (appendix at page 53a) rights by imposing an excessive fine.

The allegations contained in my complaint and herein set forth above are sufficient to sustain my cause of action and must, in accordance with the law and judicial procedure, be accepted as true until proven otherwise, which means a trial in the usual course of judicial procedure.

As a belligerent claimant in person, I demand all of my rights, privileges and immunities secured by the organic written national Constitution of the Republic of the United States and the Constitution of the State of Arkansas as being inalienable and inviolate.

II

AN ORDER ARBITRARILY ISSUED BY THE COURT DISMISSING WITH PREJUDICE ALL OF THE INDIVIDUALS LISTED IN MY COMPLAINT AND ALL THE ISSUES CONNECTED THERETO IS A FINAL ORDER AND APPEALABLE AS OF RIGHT UNDER THE PROVISIONS OF TITLE 28 U.S.C. § 1291

The Appeals Court erred in dismissing my appeal for lack of jurisdiction. This decision is in conflict with Supreme Court decisions and decisions of other appeals courts in defining a dismissal with prejudice as a final order.

In this regard, I will refer to the order and the accompanying letter signed by Judge Waters dated July 21, 1987 and filed in the district court on July 22, 1987 dismissing the part of my complaint as pertains to all the defendants listed therein with prejudice. (See Appendix exhibit A at page 1a).

The statutory authority of the court of Appeals to review Judge Waters order and accompanying letter on appeal is contained in Title 28 USC § 1291. (See Appendix at page 36a).

An order such as Judge Waters which dismiss an action with prejudice is a final order since it terminates

unequivocally all action against all the individuals listed in my complaint. If this order is not appealed immediately, I am forever barred from asserting my constitutional rights for redress of grievances against these individuals for their criminal conspiracy to deprive me of my property under color of law and for the unlawful collection by lien and levy of alleged taxes which they knew I did not owe.

Concrete evidence that Judge Waters intended for his order of July 21, 1987 to be a final order is the fact that he forbade the court clerk to issue summonses to the individuals dismissed in his order. For evidence of this, see Exhibit L at page 39a, whereby the court clerk made a written statement under the seal of the court that she would not issue the summonses. This refusal of the court clerk to issue the summonses as

requested is in direct violation of Rule 4 FRCP and is conclusive evidence that the order of July 21, 1989 was intended, by Judge Waters, to be a final order. It must therefore be concluded that the Appeals Court, in dismissing my appeal for lack of jurisdiction was in error. See Exhibit G at page 21a and Exhibit H at page 24a.

Courts have consistently held that an order dismissing with prejudice is a final order and follows the definition contained in Black's Law Dictionary for the term "with prejudice" which is quoted as follows:

> "With prejudice. The term as applied to judgment of dismissal is as conclusive of rights of parties as if action had been prosecuted to final adjudication adverse to the plaintiff. Fenton v. Thompson, 352 Mo. 199, 176 S.W.2d 456, 460."

From the above definition, it could not be made any clearer that Judge Waters' order of July 21, 1987 was a clear cut and

decisive final order when he stated "dismissed from this action, with prejudice," and the order is therefore appealable under Title 28 U.S.C. § 1291

The definition of the term "with prejudice" as contained in Black's Law Dictionary means the termination of all action on that case. This definition is further substantiated by the following cases: Segal v. Garrigues, 320 So.2d 475, Fenton v. Thompson, 176 SW 2d 456 (1944) at 460, Gonzalez v. Gonzalez, 127 NE 2d 673 at 675, Conerly v. Westinghouse Electric Corp., 623 F.2d 117 (1980), Harris v. Moye's Estate, 202 S.W. 2d 306 at 362, Schuster v. Northern Co., 256 P 2d 249 at 252, Gillespie, Administratrix v. United States Steel Corp., 379 U.S. 148 (1964), Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 545, Brown Shoe Co. v. United States, 370 U.S. 274, 306, Bronson v. Railroad Co., 2 Black 524, 531, Forgay

v. Conrad, 6 How. 201, 103, Dickinson v. Petroleum Conversion Corp., 336 U.S. 507, 511, United States v. General Motors Corp., 323 U.S. 373, 377, and Eisen v. Carlisle & Jacquelin Et Al, 417 U.S. 156 (1974).

The action of the court of appeals in rejecting my appeal for lack of jurisdiction is a departure from the usual course of Judicial proceedings and the appeals court's actions actually condones and encourages the district court to knowingly violate standard procedures and practices and is contrary to the decisions of other courts of appeal as well as the decisions of this court as set forth above and is a mandate upon this court to exercise its power of supervision over the lower courts in order to preserve the semblance of justice in our Judicial system.

III

THE DISTRICT COURT HAD NO JURISDICTION OR AUTHORITY TO ISSUE THE ORDER OF FEBRUARY 19, 1988 AND THE ACCOMPANYING LETTER OF INSTRUCTIONS.

On February 19, 1988, the District Court issued an order and an accompanying letter which was made a part of the order. See Exhibit C at page 7a. In the order and letter the court rejected my motion to disqualify Judge Waters and ordered me to amend my complaint so as to eliminate all the persons and issues dismissing in the court's order of July 21, 1987.

The letter and order issued by Judge Waters dated February 19, 1987 was void because the Judge had absolutely no jurisdiction or authority to issue this order.

First, the order of July 21, 1987 was a final order which dismissed with prejudice all the individuals and issues pertaining thereto. Evidence that Judge Waters fully intended his order of July 21, 1987 to be a final order is that he refused to permit the court clerk to issue summonses to the persons dismissed with prejudice in his

order. The court clerk made a statement under the seal of the court that she could not issue the summonses to the individuals because they had been dismissed in the order of July 21, 1987. See Exhibit L at page 39a. The refusal of the court clerk to issue the summonses was in direct violation of Rule 4 FRCP. For further argument as to the meaning of the term, "with prejudice" and the citations substantiating that an order dismissing with prejudice is a final order, see Issue II above.

It is a universally accepted fact that once a judge has issued a final order he loses all jurisdiction and authority over any matters contained therein.

Second, the final order of Judge Waters dated July 21, 1987 was on appeal at the time he issued his order of February 19, 1988.

My appeal was timely filed and docketed

in accordance with Rules 58 and 79(a) Federal rules of Civil Procedure. The order of July 21, 1987 was set forth on a separate document (appendix Exhibit A at page 1a) and entered on the civil docket in accordance with Rule 79(a) FRCP and appears on said docket as item number 3 dated July 22, 1987. The appeal was properly docketed in the Appeals Court by order and briefing schedule dated August 21, 1987. See Exhibit E at page 17a. This order was a final order in accordance with the argument and citations set forth above and appealable as a right in accordance with Title 28 U.S.C. § 1291.

When a final order of the district court is on appeal, the district court looses all authority and jurisdiction over the issues on appeal. This fact is set forth in the case of Leonard v. U.S., 633 F.2d 599, 609 and 610 (1980) where the court states:

"Normally the filing of a timely and sufficient notice of appeal immediately transfers jurisdiction, as to any matters involved in the appeal, from the district court to the court of appeals. Once a proper appeal is taken, the district court may generally take action only in aid of the appeal or to correct clerical errors as allowed by the Federal Rules of Civil (or Criminal) Procedure. See 9 Moor's Federal Practice 203.11 (2d ed. 1980)."

Since an order dismissing "with prejudice" is a final order and appealable as a right and in accordance with the above quote, the district court lost all jurisdiction and authority over the issues on appeal when the appeals court accepted the appeal.

In the case of Firestone Tire and Rubber Co. v. Risjord, 449 US 368 (1980) at 376, the court stated:

"To be appealable as a final collateral order, the challenged order must constitute `a complete, formal and, in the trial court, final rejection,' Abney v. United States, supra, at 659, of a claimed right `where denial of immediate review would render impossible any review whatsoever,' United States v. Ryan, Supra.

The order of Judge Waters dismissing the part of my complaint "with prejudice," if not appealed immediately, would cause me to lose all of my claimed right forever. There is no appeal from a final order after the trial is completed.

The purpose of Title 28 U.S.C., section 1291 is to prevent piecemeal litigation. The order of Judge Waters would be in direct conflict with this purpose. If the final order were appealable upon completion of the litigation, then it would open up the entire case as a new cause of action because the part of my complaint dismissed by Judge Waters was a complete and separate cause of action.

Although the statement above pertaining to jurisdiction of the district court is the generally accepted rule of law, there appears to be considerable controversy and disagreement among the Appeals Courts of different districts. This conflict between

the Judicial decisions of the various courts of appeals has apparently not been decided by the Supreme Court. Under the circumstances, it would be appropriate for me to suggest to this court to accept this petition for consideration for the exercise of the court's power of supervision and resolve this controversy.

IV

NO RULE CAN BE USED BY THE COURT TO DENY A SOVEREIGN CITIZEN HIS CONSTITUTIONAL RIGHTS.

Judge Waters, in his order of March 28, 1988 cites Rule 41(b) of the Federal Rules of Civil Procedure as his authority to dismiss my complaint. In his order Judge Waters states that I failed to comply with a court order.

First, I would point out to the court that the order of Judge Waters dated February 19, 1988 was a void order. Judge Waters was totally without jurisdiction to issue this order. It is well established

that no one is required to comply with a void order. For argument on this matter the court is referred to the argument contained in Issue III above.

Second, Rule 41 was never passed by congress in accordance with the Constitution and therefore cannot be a constitutional law. The assumption that the Rule becomes law by default when congress failed to act is fallacious thinking and does not make the Rule a law.

Third, even if the rule were in fact a law, Judge Waters has no authority to act on his own sua sponte to deny me my constitutional and statutory rights.

Fourth, the rule flies in the face of Title 28 U.S.C. § 2072 which is a valid law passed by congress in accordance with the Constitution. This law (2072) (see appendix at page 65a), specifically prohibits any rule to be used to deny any person his constitutional rights or trial

by jury.

Fifth, I filed a motion and supporting brief in the district court on September 1, 1987 in accordance with Title 28 U.S.C. §§ 144 and 455 to disqualify Judge Waters because of his bias and prejudice.

As a result of this motion, Judge Waters recused himself by his letter of September 24, 1987. (Appendix Exhibit M at page 40a. Later in his order of February 19, 1988, (Appendix Exhibit C at page 7a), Judge Waters denied my motion to disqualify the judge and proceeded to issue his order of February 19, 1988 and his letter opinion of the same date (Appendix Exhibit C at page 9a), which he made a part of his order.

In accordance with the case of Strenger v. U.S., 233 F.2d 947 (1956) at page 948. Once a judge has recused himself, he is forever prohibited from again assuming jurisdiction over the case.

In Berger v. U.S., 255 US 22 at 36 (1921), the court stated that Title 28 U.S.C. § 455 is a mandate for a judge to withdraw where his bias and prejudice might reasonably be questioned.

Thus, Judge Waters had no jurisdiction or authority to continue to exercise control over this case. Title 28 U.S.C. § 455 is a mandate to a judge to recuse himself when there is any show of bias and prejudice. Certainly there is such evidence in this case. A mere reading of Judge Waters' orders will convenience anyone that Judge Waters is biased and prejudice against all pro se litigants. His orders are fraught with implied hate and contempt for all pro se litigants. Obviously this attitude of Judge Waters was derived from outside sources. In support of this contention, I cite Pepsico Inc. v. McMillen, 764 F.2d 458 (1985), SCA Services Inc. v. Morgan, 557 F.2d 110 (1977, U.S.

v. Brown, 534 F.2d 467 (1976), In Re Murchison, 349 US 133, Tuny v. Ohio, 273 US. 510, Offutt v. U.S., 348 US 11.

Thus it is evident from the cases cited above that Judge Waters, even though he recused himself, he has defied the mandate of Title 28 U.S.C. § 455 and decisions of the Supreme Court. He is clearly without jurisdiction or authority to issue his order of February 19, 1988 or his order of March 28, 1988, (Appendix Exhibit D at page 14a).

V

A FALSE STATEMENT DELIBERATELY INSERTED INTO A COURT ORDER WITH THE INTENT TO DENY A litigant HIS CONSTITUTIONAL RIGHTS IS OF NECESSITY A VOID ORDER.

The order of the appeals court dated February 1, 1989 contains false statements and distortions of facts that sanctioned, condoned and even encouraged the criminal acts of the district court.

The order of the appeals court

contained the statement; "the district court's initial order of partial dismissal was correct." This statement is incorrect. My complaint alleged a valid claim against all the individuals listed therein. The sua sponte dismissal of this part of the complaint by Judge Waters in his order of July 21, 1987 without hearing denied me my constitutional rights under the Constitution and the Bill of Rights Amendments I, IV, V, VI, VII, VIII, IX and X. The order was also in direct violation of the Supreme Court decisions concerning public servant's liability as presented in the arguments of Issue II above. Further, the order was in direct violation of Title 28 U.S.C. § 2072.

Civil action is specifically authorized against public servant employees of the Internal Revenue service where they collect more taxes than are due by Title 26 U.S.C. § 7214. The court is referred to the

argument presented in Issue I above.

The appeals court made the statement in its order of February 1, 1989, "Moeller's appeal from the court's order of partial dismissal did not divest the district court of jurisdiction to dispose of his remaining claims." This statement is true, however, it did divest the court of all authority and jurisdiction over the persons and issues dismissed with prejudice in the district court order of July 21, 1987. The order of the district court dated February 19, 1988 ordered me to modify and change my complaint so as to eliminate all the persons and issues dismissed with prejudice in the court order of July 21, 1987. This order of July 21, 1987 was on appeal at the time Judge Waters issued his order of February 19, 1988. The statement made by the appeals court in its order of February 1, 1989 is ridiculous and was deliberately made to confuse and avoid the real issue.

The appeals court further stated in the order of February 1, 1989, "Moeller's attempt to allege a cause of action under 26 U.S.C. § 7422 was also properly dismissed for failure to file his suit within the time requirements set forth in 26 U.S.C. § 6532(a)." This statement is false and was knowingly and deliberately made with the intent to further confuse the issue and deny me my constitutional and statutory rights. The section referred to in the court order is quoted as follows:

> Sec. 6532. Periods of limitation on suits.
> (a) Suits by Taxpayers for Refund. -
>
> (1) General rule. - No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

In accordance with this cited statute, I have two years from the date the Secretary mails to me by certified mail a notice of disallowance of any claim. As of this date, the Secretary has not provided me with a disallowance of my claim. Therefore, in accordance with the cited statute, the statute of limitation has not even to this date, begun to run much less expire and a valid complaint could be filed even yet and be within the time frame of the statute.

Nowhere in the district court's order or memorandum opinion is there any mention of dismissal because of a statute of limitation. The question then arises as to where the appeals court came up with such an outrageous false conclusion. It was as though they acted on the basis of some voodoo witch doctor or sorcerer's magic to reach up into the sky and pluck from thin air an ethereal imagined ingredient and

give it substance by placing it in print in the appeals court order. However, it is well recognized that a false statement remains false even though repeated a thousand times and no matter how many people give credence to the false statement.

It appears that the courts have no compunctions nor do they hesitate in making false statements even though the falsification of the court records is a felony under the provisions of Title 18 U.S.C. § 1001 and 1018.

In this respect, I would bring to your attention a false statement made by Judge Waters in his order and memorandum opinion of January 3, 1985 as pertains to my complaint, Civ. No. 84-5209 filed December 24, 1984 to recover taxes paid to the IRS for the tax year 1979. A copy of this order and memorandum opinion is included in the appendix as Exhibit N at page 42a.

In this order and memorandum opinion Judge Waters states:

> "While much of the 47 pages of the complaint contains mere conclusions, it is apparent that plaintiff complains about the validity of certain tax assessments which have been made against him, and the attempts by the Internal Revenue Service to collect the taxes which it, through its Commissioner and other employees, claims are due."

This statement is false and was deliberately made in order to justify the sua sponte dismissal of my valid complaint. I had paid the entire amount the public servant employees falsely assessed and alleged I owed.

I complied with the provisions of Title 26 U.S.C. § 7422 by filing a demand for refund and then filed my complaint accordingly.

Proof of my payment of the amount the IRS falsely claimed I owed for the tax year 1979 is my cancelled check in the amount of $2094.88, dated January 31, 1983, included

in the appendix as Exhibit O at page 50a.

This is twice I have been denied my constitutional rights by false and fraudulent statements made by the courts. Hopefully, the Supreme Court has sufficient integrity and sense of justice to rectify the criminal conduct of the lower courts. The refusal of the courts to permit me access to the courts to recover money that was unlawfully assessed and collected by distraint is a criminal act that denies me my constitutional and statutory rights and encourages theft by the public servant employees of the Internal Revenue Service.

VI

REASONS FOR GRANTING THIS WRIT.

The Supreme Court of the United States is the last bastion of freedom and justice for the American citizen. Each member of the court is under oath to uphold the Constitution and laws of the United States and to do equal right to the poor and rich.

If this oath be true, why then is it that the rich who can afford attorneys can be assured of having their case at least heard before it is dismissed while a person of limited means such as myself, cannot gain access to the court. I am not able to afford an attorney and of necessity, had to expend an unbelievable amount of time, effort and expense studying and preparing my complaint.

In spite of all my efforts, a biased and prejudice judge arbitrarily sua sponte dismissed my case without hearing or receiving any evidence.

Is this the justice of which the Constitution speaks. If so, where is my First Amendment right to petition my government for redress of grievances. Where is my Fifth Amendment right of due process? Where is my inalienable right to trial by jury secured by the Seventh Amendment? Where is my right to equal

protection of the law as provided by the Fourteenth Amendment?

It would appear that the Supreme Court is deliberately making a concerted effort to keep pro se litigants out of the court system. This fact is evidenced by the system of rules which are obviously designed to make it virtually impossible for the average citizen to get into court much less to be heard.

Rules of Appellate Procedure and the Supreme Court pertaining to the format, construction, number of copies and reproduction requirements make it nearly impossible for a pro se plaintiff of limited funds such as myself to comply with the pertinent rules. These rules are obviously designed to limit access to the court especially by pro se litigants.

The rules themselves at all levels of the judicial system are nul and void and unconstitutional in that they were not

properly passed on by Congress in accordance with the Constitution. A statement does not become law by default. A proposed rule cannot become law by the failure of Congress to act. No proposed law or rule can become law except by an affirmative action by Congress in accordance with the procedures set forth in the Constitution. None of the rules set forth in Title 28 U.S.C. were constitutionally enacted and are void and of no effect. The application of these void rules to deny a plaintiff his constitutional rights is perpetrating a fraud. Even if the rules were properly passed by Congress, most of them would be void because they deny citizens their constitutional rights as applied.

The application of a rule to deny a sovereign citizen his constitutional rights is in direct conflict with Title 28 U.S.C. § 2072.

The integrity and honesty of our courts must be preserved so as to insure justice. Dishonest and corrupt judges must be purged from the system. The courts must be made available to the average citizen to redress his grievances. Honesty in government can only be assured when the public servant employees of the government are made personally liable to the victims of their criminal acts. It is very obvious that criminals in government are not punished while the average law abiding citizen is often persecuted and/or prosecuted for merely asserting his constitutional rights.

I attribute much of the crime that we are faced with today to the fact that the average citizen and especially those in the lower income group see the widespread corruption and criminal acts of government officials. These criminal acts of public officials go unpunished, and in frustration, the average law abiding

citizens engage in criminal activities. The courts have the authority to correct the situations if they will, before anarchy takes over.

This magnanimous task can be accomplished as follows:

1. First and foremost, purge the judicial system of corrupt and dishonest judges.

2. The Supreme Court must exercise closer supervision over the lower courts to see that constitutional rights of citizens are not violated.

3. The Supreme Court must insist that government officials at all levels and in all branches of government be made personally liable to the victims of their criminal acts.

4. The Supreme Court must review all cases presented to it where a constitutional issue is in question even if in no other way than to remand the case to

the district court for hearing on the merits.

5. Insist that all judges who show the least indication of bias or prejudice be removed from the case and if necessary, from the bench.

6. Remove the limitation on the number of pages that may be used to present a case.

7. Change the Supreme Court format to the standard 8 1/2" x 11" paper so as to make review by the Supreme Court more feasible for pro se litigants. It would appear that the supreme court is more concerned with format than substance.

As a pro se plaintiff and a belligerent claimant in person and as a sovereign citizen of the United States, I demand my rights, privileges and immunities as secured by the organic Constitution of the republic of the United States. The Supreme Court is bound by the Constitution as the

supreme law of the land and the judge's oath of office to review my case and restore my constitutional rights that have been flagrantly violated by the lower courts.

The court's refusal to review my case and reprimand the judges involved would condone and encourage the criminal acts of these judges and the public servant employees of the Internal Revenue Service.

The total disregard of the decisions and dicta of the supreme court by the lower courts shows their disrespect and contempt for the supreme court. They apparently think they are wiser and more knowledgeable in the law than members of the Supreme Court.

CONCLUSION

As a sovereign citizen, I demand that the supreme court for the reasons set forth above, review this case as my right secured

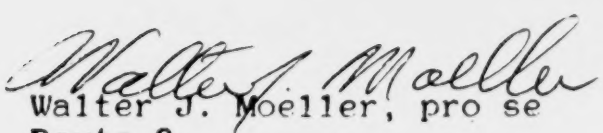
by the Constitution of the United States and take the following action:

1. Void all the orders issued by the district court and the court of appeals.

2. Remand the case to the district court for trial on the merits.

3. Order the recusal of Judge Waters from any further action on any case where I am a plaintiff or defendant.

4. Award me damages of $50,000.00 from each of the judges who acted as judge in any part of this case.



Walter J. Moeller, pro se
Route 2
West Fork, AR 72774
(501) 839-2484

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

V. CIVIL NO. 87-5089

UNITED STATES GOVERNMENT, DEFENDANTS
ET AL.

O R D E R

On this 21st day of July, 1987, the court, after considering the "Complaint for Recovery of Money Illegally Assessed and Collected, Section 7422 IRC Deprivation of Constitutional Rights Libel," finds, sua sponte, that such pleading is frivolous on its face except to the extent that it attempts to allege a cause of action under 26 U.S.C § 7422 for refund of taxes wrongfully assessed and paid under protest. All other allegations of said pleading, and all defendants with the exception of the United States, are dismissed from this action, with prejudice. This matter

Exhibit A

shall remain pending, subject to further orders of the court, and will be considered to be a complaint to collect taxes allegedly paid by the plaintiff, under protest, in the amount of $10,316.54, $467.45 of which has been refunded to the plaintiff.

IT IS SO ORDERED.

H. Franklin Waters (seal)

United States District Judge

U.S. District Court
Western Dist. Arkansas

F I L E D

Jul 22 1987

Beverly R. Stites, Clerk
By Rhonda Clark
Deputy Clerk

Exhibit A

UNITED STATES DISTRICT COURT
Western District of Arkansas
Post Office Box 1908
Fayetteville, Arkansas 72702-1908

H. Franklin Waters
Chief Judge

July 21, 1987

Mr. Water J. Moeller
Route 2
West Fork, Arkansas 72744

Mr. J. Michael Fitzhugh
United States Attorney
P.O. Box 1524
Fort Smith, Arkansas 72902

Re: Walter J. Moeller v. United States Government, et al.
Civil No. 87-5089

Gentlemen:

The court has received and reviewed the "Complaint for Recovery of Money Illegally Assessed and Collected, Section 7422 IRC Deprivation of Constitution Rights Libel" filed by Mr. Moeller. The court is convinced that the complaint is, by and large, frivolous on its face. The cases and statutes which hold that employees of the Internal Revenue Service may not be individually sued are almost too numerous to list. For example, 26 U.S.C. § 7422, the very statute cited by Mr. Moeller for jurisdiction, states: "A suit or proceeding referred to in subsection (a) may be maintained only against the United States and not against any officer or employee of the

Exhibit A

United States (or former officer or employee) or his personal representative."

While it is difficult to determine from the 36 pages which comprise the complaint that Mr. Moeller has really asked for a refund of taxes wrongfully paid, the court will liberally construe the "pleading" in favor of Mr. Moeller and will consider this to be an action brought under 26 U.S.C. § 7422 for refund of taxes wrongfully assessed and paid under protest. The court, sua sponte, determines that all other allegations of the complaint are frivolous on their face and should be dismissed. All defendants, other that the United States, will be dismissed from the lawsuit with prejudice.

Yours very truly,

H. Franklin Waters (seal)

cc: U.S. Clerk

Exhibit A

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL NO.87-5089
	)	
UNITED STATES GOVERNMENT ET AL.,	)	
	)	
Defendants	)	

ORDER

Defendant's Motion for Leave to File Reply is granted. Defendant's Reply to Plaintiff's Opposition to and Response to Defendant's Motion to Dismiss shall be deemed to be filed the date that this Order is entered on the docket.

SO ORDERED this 8th day of February, 1988.

H. Franklin Waters (seal)

UNITED STATES DISTRICT JUDGE

Exhibit B

U.S. District Court
Western Dist. Arkansas

F I L E D

Feb 8 1988

Chris R. Johnson, Clerk
By Rhonda Clark (seal)
Deputy Clerk

Exhibit B

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

vs. Civil No. 87-5089

UNITED STATES GOVERNMENT,
ET AL. DEFENDANTS

O R D E R

On this 19th day of February, 1988, upon consideration of the entire file herein the court finds for the reasons set forth in its letter to plaintiff and the attorney for the defendant, a copy of which is attached hereto and made a part hereof, that plaintiff's motion to disqualify the undersigned be and it hereby is denied. The court further finds that defendant's motion to dismiss should be and it hereby is considered to be a motion to make more definite and certain, and plaintiff is ordered and directed to make his motion more definite and certain in the manner

Exhibit C

specified in the court's letter.

IT IS SO ORDERED.

H. Franklin Waters (seal)
United States District Judge

U.S. District Court
Western Dist. Arkansas
F I L E D

Feb 19 1988
Chris R. Johnson, Clerk
By JC (seal)
Deputy Clerk

Exhibit C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
POST OFFICE BOX 1908
FAYETTEVILLE, ARKANSAS 72702-1908

H. Franklin Waters
Chief Judge

February 19, 1988

Mr. Walter J. Moeller
Route 2
West Fork, AR 72774

Mr. Michael N. Wilcove
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044

Mr. J. Michael Fitzhugh
United States Attorney
P.O. Box 1524
Fort Smith, AR 72902

Re: Walter J. Moeller, v. United States
Government, et al.
Civil No. 87-5089

Gentlemen:

As you know, this case has been pending for several months and, because Mr. Moeller has appealed the court's order disposing of a portion of the case, this court has taken no action for several months. It was, however, again called to the court's attention because of the blizzard of papers brought on by the government filing its slightly more

Exhibit C

than one page motion for relief to file a reply to plaintiff's response to the government's motion to dismiss. When the court granted that motion and a two page reply was filed by the defendant, that brought on twenty-nine pages of additional filings by Mr. Moeller.

That has caused the court to again look at the matter, and has determined that it has jurisdiction to proceed in spite of the notice of appeal filed by plaintiff. This is because, in the court's view, the filing of the notice of appeal is clearly an attempt to appeal a non-appealable order. Of course, 28 U.S.C. § 1291 allows the appeals only from "final decisions" of the district courts. The courts dismissal of only a portion of the lawsuit, leaving other matters to be tried is not a final order within the meaning of that statute.

The United States Supreme Court said long ago in Catlin v. United States, 324 U.S. 229, 233 (1945) that:

> A `final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.

As the Supreme Court pointed out in that case, the purpose of 28 U.S.C. § 1291 is clearly to prevent piecemeal appeals.

The court has concluded that plaintiff's attempted appeal in this case is clearly an attempt to appeal an order that is not final. What the court did in the earlier order to dismiss only

Exhibit C

a portion of the lawsuit against some of the defendants. There are still issues to be disposed of. Thus, the court's earlier order was not a "final decision" because the court has more to do than execute the judgment rendered. It must, if it reaches that point, try the issue of whether plaintiff is entitled to tax refunds for the years in question.

Since that is true, this court has jurisdiction to proceed in this matter and to rule on the motion for summary judgment. The Court of Appeals for the Second Circuit, in Leonhard v. United States, 633 F.2d 599 (2d Cir. 1980), in a well-reasoned opinion, held that the filing of the notice of appeal of a non-appealable order does not deprive the trial court of jurisdiction, and said, "[W]e see no efficiency to be gained by allowing a party arbitrarily to halt the district court proceedings by filing a plainly unauthorized notice which confers on this court the power to do nothing but dismiss the appeal." Id at 610.

On September 1, 1987, plaintiff filed a motion to disqualify this court and a brief in support and subsequently filed a response to the government's opposition to the motion. The motion and response of plaintiff consists of some 87 pages.

It is clear from the materials included with Mr. Moeller's motion that it has no merit. It is obvious that Mr. Moeller objects to the court's handling of this case and a prior one and, as he points out, he does not know me and I do not know him. His remedy, if he disagrees with the court's rulings, is

to appeal and he appears to have discovered how to do that.

As is pointed out in 13A Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction § 3452 it is not enough to cause a judge to disqualify to show that he has acquired from what has gone on during a case a personal conviction as to the merits of it. Nor, is the judge disqualified because he has presided over some other case involving the same party or closely related facts. Instead, it must be shown that:

> The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other that what the judge learned from his participation in the case.

United States v. Grinnell Corp., 384 U.S. 563, 583 (1966). See also the several cases cited at footnote 13 of the Wright & Miller article at 559.

As indicated, the court has concluded that it is time to get this matter ready for trial if it is going to be tried, or if it is not, to dispose of it. The court agrees with the defendant that it can hardly be expected that either the defendant or the court know what Mr. Moeller claims his cause of action is from the 36 page, 104 paragraph complaint filed by him. As the court ruled in its letter of July 21, 1987, and accompanying order, all portions of the lawsuit have been dismissed with the exception of his claim, if he has made such a claim, that he is entitled to recover taxes in the amount of $10,316.54, $467.45 of which

has been refunded to the plaintiff. The court will consider the defendant's motion to dismiss as a motion to make more definite and certain. Plaintiff will have ten days from the date of this order to amend his complaint to allege this cause of action, if he believes he has one. Such amended complaint will comply with Rule 8 of the Federal Rules of Civil Procedure and will, thus, be "a short and plain statement of the claim showing that the pleader is entitled to relief." The pleading must be in concise and plain terms showing what the plaintiff contends the government did to him in relation to those taxes. The court will not accept a pleading which attempts to make claims other that that which the court left pending by its July 21, 1987, letter and order.

Yours very truly,

H. Franklin Waters (seal)
H. Franklin Waters

cc: U.S. Clerk

Exhibit C

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER, Pro Se
PLAINTIFF

vs. Civil No. 87-5089

UNITED STATES GOVERNMENT, ET AL
DEFENDANTS

O R D E R

On this 28th day of March, 1988, upon consideration of the entire file herein, the court finds:

1) That by letter dated February 19, 1988, the plaintiff was advised that the court had considered defendant's motion to dismiss as a motion for more definite statement and plaintiff was ordered and directed to, within ten days, reduce his 36 page 104 paragraph complaint previously filed by him to "a short and plain statement" of his claim as required by Rule 8 of the Federal Rules of Civil Procedure.

Exhibit D

2) That defendant's response to the court's order was to file, on February 24, 1988, a 13 page response contending that the court was biased and prejudiced and generally "wrong" and a multiple page petition for writ of mandamus.

That the court was concluded that the "claim" of plaintiff should be and it hereby is dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure in that plaintiff has failed to comply with the Federal Rules of Civil Procedure and a specific order of the court.

IT IS, THEREFORE, CONSIDERED ORDERED AND ADJUDGED that plaintiff's complaint filed herein should be and it hereby is dismissed with prejudice and that this matter should be and it hereby is terminated. The clerk of the court is directed to refrain from accepting

further filings in this matter other than those filings necessary for plaintiff to perfect an appeal if that is his desire.

IT IS SO ORDERED.

H. Franklin Waters (seal)

United States District Judge

U.S. District Court
Western Dist. Arkansas
F I L E D

Mar 28 1988

Chris R. Johnson, Clerk
By N.W.
Deputy Clerk

This document entered on docket in compliance with Rule 58 and 79(a), FRCP on 3-29-88 by N.W.

Exhibit D

United States Court of Appeals
For the Eighth Circuit
U.S. Court & Custom House
1114 Market Street
St. Louis, Missouri 63101

Robert D. St. Vrain
Clerk

304-425-5600
FTS: 279-5600

August 21, 1987

Mr. Walter J. Moeller
Route 2
West Fork, AR 72774

Re: 87-2141WA Walter J. Moeller, APPELLANT vs. Roscoe L. Eggers, etc., et al, APPELLEES (see attached for complete title)

Dear Mr. Moeller:

We have received certified copies of notice of appeal and docket entries from the Clerk of the United States District Court, together with notification of payment of the $100 docket fee. In accordance, with the Federal Rules of Appellant Procedure and our local Rules, this appeal has today been assigned the docket number indicated.

Enclosed is a copy of a briefing schedule order entered today regarding record on appeal.

Sincerely,

Linda L. Penberthy 1k1

(seal)

Linda L. Penberthy
Senior Deputy Clerk

Exhibit E

Enclosure

cc: Hon. J. Michael Fitzhugh,
United States Attorney,
P.O. Box 1524,
Fort Smith, AR 72902

Ms. Beverly R. Stites, Clerk,
U.S. District Court,
P.O. Box 1447,
Fayetteville, AR 72702 (87-5089)

Exhibit E

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

APPEAL BRIEFING SCHEDULE ORDER

Appeal No. 87-2141WA Walter J. Moeller
v. Roscoe L. Eggers, et al

Date: August 21, 1987

The Court will consider this appeal on the original file of the United States District Court in lieu of the designated record required by Circuit Rule 7. The Clerk of the District Court is requested to forward the original file to this Court forthwith.

APPELLANT BRIEF: September 30, 1987

APPELLEE BRIEF: October 30, 1987

Linda L. Penberthy
Senior Deputy Clerk

Exhibit E

Enclosure

cc: Hon. J. Michael Fitzhugh,
United States Attorney,
P.O. Box 1524,
Fort Smith, AR 72902

Ms. Beverly R. Stites, Clerk,
U.S. District Court,
P.O. Box 1447,
Fayetteville, AR 72702 (87-5089)

Exhibit E

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

APPEAL BRIEFING SCHEDULE ORDER

Appeal No. 87-2141WA Walter J. Moeller
v. Roscoe L. Eggers, et al

Date: August 21, 1987

The Court will consider this appeal on the original file of the United States District Court in lieu of the designated record required by Circuit Rule 7. The Clerk of the District Court is requested to forward the original file to this Court forthwith.

APPELLANT BRIEF: September 30, 1987

APPELLEE BRIEF: October 30, 1987

Linda L. Penberthy
Senior Deputy Clerk

Exhibit E

UNITED STATES COURT OF APPEALS

For The Eighth Circuit

No. 88-1782WA

Walter J. Moeller,
Appellant,
vs.

United States of America,
Appellees

Appeal from the United States District Court for the Western District of Arkansas

On the Court's own motion the briefing schedule in this case is hereby held in abeyance until two weeks after the resolution of the status of appeal No. 87-2141WA.

August 19, 1988

Order Entered Under Rule 5(a):

Robert D. St. Vrain (Seal)
Clerk, U.S. Court of Appeals,
Eighth Circuit

Exhibit F

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 87-2141

Walter J. Moeller, Appellant, v.	* Appeal from the United States District Court for the Western District of Arkansas
Roscoe L. Eggers, Individually and in his capacity as a public servant employee of the IRS; James Westbrook, Individually and in his capacity as a public servant employee of the IRS; Paul D. Williams, Individually and in his capacity as a public servant employee of the IRS; William F. Barlow, Individually and in his capacity as a public servant employee of the IRS; H. Carradine, Individually and in his capacity as a public servant employee of the IRS; Randall Haynes, Individually and in his capacity as a public servant employee of the IRS; S. R. McKeever, Individually and in his capacity as a public servant employee of the	*

Exhibit G

IRS; Richard C. Voskuill, *
Individually and in his *
capacity as a public *
servant employee of the *
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Individually and in his *
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Exhibit G

IRS; Raymond P. Keenan, Individually and in his capacity as a public servant employee of the IRS; and Unknown Public Servant Employees of the Internal Revenue Service et al, whose names are indicated by the records of the Internal Revenue Service, Individually and in their capacity as employees of the Internal Revenue Service. *

Appellees.

Filed: September 22, 1988

Before HEANEY, BOWMAN and MCGILL, Circuit Judges.

O R D E R

The appeal of Walter J. Moeller is dismissed for lack of jurisdiction.

A true copy.

Attest: Robert D. St. Vrain (seal)

Clerk, U.S. Court of Appeals
Eighth Circuit

U.S. District Court
Western Dist. Arkansas
F I L E D
Nov 28 1988
Chris R. Johnson, Clerk
By
Deputy Clerk

Exhibit G

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 87-2141

Walter J. Moeller, Appellant, v.	* Appeal from the United States District Court for the Western District of Arkansas
Roscoe L. Eggers, Individually and in his capacity as a public servant employee of the IRS; James Westbrook, Individually and in his capacity as a public servant employee of the IRS; Paul D. Williams, Individually and in his capacity as a public servant employee of the IRS; William F. Barlow, Individually and in his capacity as a public servant employee of the IRS; H. Carradine, Individually and in his capacity as a public servant employee of the IRS; Randall Haynes, Individually and in his capacity as a public servant employee of the IRS; S. R. McKeever, Individually and in his capacity as a public servant employee of the	*

Exhibit H

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Appellees.

Filed: October 19, 1988

Before HEANEY, BOWMAN AND MAGILL, Circuit Judges.

O R D E R

This Court has before it a motion of appellant to clarify this Court's order of September 22, 1988. In that order we dismissed the appellant's appeal for lack of jurisdiction. We did so for the reason that it appears from the district court's order of July 22, 1987, that the district court still has under consideration the appellant's allegation that under 26 U.S.C. § 7422, he is entitled to have taxes that he paid under protest refunded to him.

Exhibit H

When the matter has been determined, the appellant will be able to renew his appeal to this Court if he so chooses.

A true copy.

Attest:

Robert D. St. Vrain (Seal)
Clerk, U.S. Court of Appeals,
Eighth Circuit.

Exhibit H

United States Court of Appeals

For the Eighth Circuit

No. 87-2141

Walter J. Moeller,	*	
	*	
Appellant,	*	
	*	
vs.	*	Appeal from the
	*	United States
Roscoe L. Eggers, etc	*	District Court
et al	*	for the Western
Appellees	*	District of
	*	Arkansas

Appellant's petition for rehearing en banc has been considered by the court and is denied.

Petition for rehearing by the panel is also denied.

November 2, 1988

Order Entered at the Direction of the Court:

Robert D. St. Vrain (seal)
Clerk, U.S. Court of Appeals,
Eighth Circuit.

Exhibit I

United States Court of Appeals
For the Eighth Circuit
U.S. Court & Custom House
1114 Market Street
St. Louis, MO 63101

Robert D. St. Vrain
Clerk

314-425-5600
FTS: 279-5600

February 1, 1989

Mr. Walter J. Moeller
Route 2
West Fork, AR 72774

RE: 88-1782WA Walter J. Moeller V.
United States, et al

Dear Counsel:

Enclosed is a copy of the opinion filed today in the referenced case. Judgment in accordance with the opinion is also entered today. The opinion will not be published.

Anyone contemplating the filing of a petition for rehearing should review Federal Rules of Appellate Procedure 35 and 40 and Eighth Circuit Rules 15 and 16. Petitions for rehearing must be received by the Clerk's office within the time set by FRAP 40 (within 14 days of entry of judgment) unless extended by court order. Petitions for rehearing or motions to extend the time for filing rehearing requests are not afforded any grace period for mailing and are subject to being denied if not timely received. Please review Eighth Circuit Rule 16(d)

Exhibit J

if an en banc request is contemplated.

Counsel's attention is also directed to Federal Rule of Appellate Procedure 39 and Eighth Circuit Rules 7(f) and 8(j). Itemized and verified bills of costs are to filed with this office with proof of service within 14 days from this date. Counsel for the prevailing party should promptly forward to us an itemized bill of costs for the reproduction of the authorized number of copies of their briefs. Failure to submit an itemized bill of costs will result in waiver of costs. Untimely itemized bill of costs will not be processed without a special order of the Court. Objections to requested bills of costs must also be submitted on a timely basis-within 10 days of the bill of costs.

Sincerely,

Robt. D. St Vrain, Clerk

BY: Marilyn McDonald (Seal)
Deputy Clerk/Opinions

RSV/mm
Enclosure
cc: J. Michael Fitzhugh
Gary R. Allen
Richard J. Neubauer
Kevin M. Brown
Christopher Johnson, Clerk
(87 5089)

Exhibit J

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 88-1782

Walter J. Moeller, Appellant, v.	* Appeal from the United States District Court for the Western District of Arkansas
United States of America; Roscoe L. Eggers Individually and in his capacity as a public servant employee of the IRS; James Westbrook, Individually and in his capacity as a public servant employee of the IRS; Paul D. Williams, Individually and in his capacity as a public servant employee of the IRS; William F. Barlow, Individually and in his capacity as a public servant employee of the IRS; H. Carradine, Individually and in his capacity as a public servant employee of the IRS; Randall Haynes, Individually and in his capacity as a public servant employee of the IRS; S. R. McKeever, Individually and in his capacity as a public servant employee of the	*

Exhibit J

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Exhibit J

IRS; Raymond P. Keenan, Individually and in his capacity as a public servant employee of the IRS; and Unknown Public Servant Employees of the Internal Revenue Service et al, whose names are indicated by the records of the Internal Revenue Service, Individually and in their capacity as employees of the Internal Revenue Service. *

Appellees.

Submitted: January 10, 1989
Filed February 1, 1989

Before JOHN R. GIBSON, WOLLMAN, AND BEAM, Circuit Judges.

PER CURIAM.

Walter J. Moeller appeals the district court's order dismissing his suit sua sponte pursuant to Federal Rule of Civil Procedure 41(b) for failure to file a "short and plain" statement of his claim as required by Federal Rule of

Exhibit J

Civil Procedure P.8, and as ordered by the court. We affirm.

On July 14, 1987, Moeller filed a complaint seeking damages and a refund of taxes collected "for the years 1980 and 1981," alleging, inter alia, that the United States Government, nineteen named IRS employees, and other unknown IRS employees, had engaged in a conspiracy to defraud him of his property, deprive him of his constitutional rights, and libel him. The district court, sua sponte, found the pleading frivolous except to the extent it attempted to allege a cause of action under 26 U.S.C. § 7422 for refund of taxes wrongfully assessed and paid under protest. The court dismissed with prejudice all other claims and all defendants except the United States.

Moeller appealed the court's partial

dismissal and filed a motion in the district court to disqualify the district court judge on the ground of personal bias. The district court determined that Moeller's appeal from the court's nonappealable order did not divest the district court of jurisdiction to proceed; denied Moeller's motion to disqualify; and ordered Moeller to make his complaint more definite as specified in the court's accompanying letter. When Moeller failed to comply, the court dismissed his action under Federal Rule of Civil Procedure 41(b). This appeal followed.

The district court's initial order of partial dismissal was correct. See Gilbert v. DaGrossa, 756 F.2d 1455, 1458 (9th Cir. 1985); Cameron v. IRS, 773 F.2d 126 (7th Cir. 1985); South Carolina

Exhibit J

v. Regan, 465 U.S. 367, 376-74 (1984). Moeller's appeal from the court's order of partial dismissal did not divest the district court of jurisdiction to dispose of his remaining claims. See Leonhard v. United States, 633 F.2d 599, 610-11 (2d Cir. 1980), cert. denied, 451 U.S. 908 (1981).

A court may sua sponte dismiss an action for failure to comply with a court order. Haley v. Kansas City Star, 761 F.2d 489, 490 (8th Cir. 1985). Although the district court gave Moeller an opportunity to amend his complaint, Moeller's numerous responses indicated he did not intend to comply with the court's order. Moeller's attempt to allege a cause of action under 26 U.S.C. § 7422 was also properly dismissed for failure to file his suit within the time requirements set forth in 26 U.S.C. § 6532(a).

Exhibit J

Finally, Moeller's allegations of district court bias are based on his disagreement with the district court's rulings in this case and its sua sponte dismissal of his previous suit. Disagreement with a judge, however, is not grounds for recusal. United States v. Grinnell Corp., 384 U.S. 563, 580-83 (1966). Accordingly, the district court did not abuse its discretion in denying Moeller's motion to recuse. See Gilbert v. City of Little Rock, 722 F.2d 1390, 1399 (8th Cir. 1983) (subsequent history omitted).

Accordingly, the district court is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS

EIGHTH CIRCUIT

Exhibit J

UNITED STATES COURT OF APPEALS

For the Eighth Circuit

No. 88-1782-WA

Walter J. Moeller,	* Appeal from the
	* United States
Appellant,	* District Court
	* for the Western
vs.	* District of
	* Arkansas
United States of America, et al.,	*
	*
	*
Appellees	*

Appellant's petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

March 17, 1989

Order entered at the Direction of the Court;

Robert D. St.Vrain (seal)

Clerk, United States Court of Appeals, Eighth Circuit.

Exhibit K

UNITED STATES DISTRICT COURT
Office of the Clerk
Western District of Arkansas
Post Office Box 1523
Fort Smith, Arkansas 72902
(501) 783-6833 . FTS 740-3419

P.O. Box 1566
El Dorado, AR 71730

P.O. Box 1447
Fayetteville, AR 72702

P.O. Box 2746
Texarkana, AR 75501

Drawer 1
Hot Springs, AR 71901

September 23, 1987

Re: Civil Case No. 87-5089
Walter J. Moeller v. USA, et al

Mr. Walter J. Moeller did tender 19 summonses to the Clerk's Office, Fayetteville Division, demanding them to be issued this date, under Title 28 Rule 4 of Federal Rules of Civil Procedure. These summonses could not be issued by this office due to the defendants having been dismissed, by Court Order dated July 22, 1987.

BEVERLY R. STITES, CLERK

By: Joanne Casebere, D.C. (seal)

Exhibit L

UNITED STATES DISTRICT COURT
Western District of Arkansas
Post Office Box 1908
Fayetteville, Arkansas 72702-1908

H. Franklin Waters
Chief Judge

September 24, 1987

Mr. Water J. Moeller
Route 2
West Fork, AR 72774

Mr. Michael N. Wilcove
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 14198
Ben Franklin Station
Washington, D.C. 20044

Mr. J. Michael Fitzhugh
United States Attorney
P.O. Box 1524
Fort Smith, AR 72902

Re: Walter J. Moeller v. United States Government, et al. Civil No. 87-5089

Gentlemen:

Mr. Moeller has filed a motion asking that I disqualify in this case, and the government has responded.

I understand that at least some portion and perhaps all of this case is on appeal to the Court of Appeals, and I am not certain that I have jurisdiction to take any action in the matter unless

Exhibit M

and until it is remanded. For this reason, I will take no action on the motion until then.

Yours very truly,

H. Franklin Waters (seal)
H. Franklin Waters

cc: U.S. Clerk

Exhibit M

IN THE UNITED STATES DISTRICT
COURT
WESTERN DISTRICT OF
ARKANSAS
FAYETTEVILLE DIVISION

WALTER J. MOELLER PLAINTIFF

V. civil No. 84-5209

H. CARRADINE, Individually;
Et Al. DEFENDANTS

O R D E R

On this 3rd day of January, 1985, for the reasons set forth in a memorandum opinion filed contemporaneously herewith, the court, sua sponte, dismisses this matter with prejudice.

Exhibit N

IT IS SO ORDERED.

H. Franklin Waters (Seal)

United States District Judge

U.S. District Court
Western Dist. Arkansas
F I L E D

JAN 3, 1985

Pat L. Graham, Jr., Clerk
By

Deputy Clerk

Exhibit N

IN THE UNITED STATES DISTRICT
COURT WESTERN DISTRICT OF
ARKANSAS
FAYETTEVILLE DIVISION

U.S. District Court
Western Dist. Arkansas
F I L E D

JAN 3, 1985

Pat L. Graham, Jr., Clerk
By
Deputy Clerk

WALTER J. MOELLER PLAINTIFF

v. Civil No. 84-5209

H. CARRADINE, Individually;
Et Al DEFENDANTS

MEMORANDUM OPINION

This appears to be another of the "tax protester" lawsuits which are frequently filed in this court. Much of the 47-page complaint filed by the plaintiff contains phrases which are almost identical to phrases which are found in many of the numerous lawsuits of this type which have been filed.

Exhibit N

Plaintiff, Walter J. Moeller, sues Roscoe L. Eggers, Jr., Commissioner, Internal Revenue Service, and eleven other named individuals who are alleged to be agents of or employees of the Internal Revenue Service. In an apparent attempt to make certain that he had sued everyone who had in the past or might in the future deal with his tax returns, he also sued "Unknown Public Servant Employees of the Internal Revenue Service, it al., whose names are indicated by the records of the Internal Revenue Service, Individually." While much of the 47 pages of the complaint contains mere conclusions, it is apparent that plaintiff complains about the validity of certain tax assessments which have been made against him, and the attempts by the Internal Revenue Service to collect the taxes which it,

Exhibit N

through its Commissioner and other employees, claims are due. Plaintiff claims that these attempts violate almost every constitutional right and civil right afforded citizens of the United States by the United States Constitution, and prays for $100,000,000.00 in punitive damages; $100,000,000.00 in compensatory damages, $2,216.43 in actual damages; and for a writ of mandamus compelling the defendant to "abide by his oath of office and force all the civil servant employees of the Internal Revenue Service to obey and protect the rights of sovereign citizens under the Constitution of the United States of America."

This lawsuit is very similar to the suits which resulted in this court's opinion in Udey v. District Director, 534 F. Supp. 219 (W.D. Ark. 1982), and

Exhibit N

for the reasons set forth in that opinion, the court finds that Mr. Moeller's cause of action is frivolous and should be dismissed. As the court said in that opinion:

> The court finds that it clearly does not have jurisdiction in any of these cases and that, as far as an action in this court is concerned, they are frivolous on their face and without merit. Whether Mr. Udey actually owes the tax the Internal Revenue Service says is due is of no importance in determining the jurisdiction of this court. The law very specifically provides a remedy for him and other taxpayers in the event that the Internal Revenue Service is wrong and he does not owe the tax . . . If Mr. Udey, in fact, does not owe the taxes which have been assessed against him, he has two courses of action which are certainly adequate. He may, as pointed out above, refuse to pay the tax and bring an action in tax court (26 U.S.C. § 6213), or he may pay the tax and bring an action in district court to recoup it (26 U.S.C. § 7422). He may not, however, prevent the payment of the tax by seeking to enjoin the United States and its duly authorized officers from collecting the tax, nor may he sue those officers for damages for acting to carry out the duties imposed upon them by law.

Exhibit N

As indicated above, plaintiff has sued at least twelve named individuals, all employees of the United States, and all "Unknown Public Servant Employees of the Internal Revenue Service, et al., whose names are indicated by the records of the Internal Revenue Service, Individually." It is obvious on the face of the complaint that there is no basis for this lawsuit, and it would serve no useful purpose for this court to require the numerous individuals named as defendants to retain counsel, at the expense of the taxpayers, to defend this lawsuit. It would serve no purpose, because it is apparent from the face of the complaint that it will, sooner or later, be dismissed because of lack of merit, and, for this reason, the court will, contemporaneously with the issuance of this opinion, sua sponte,

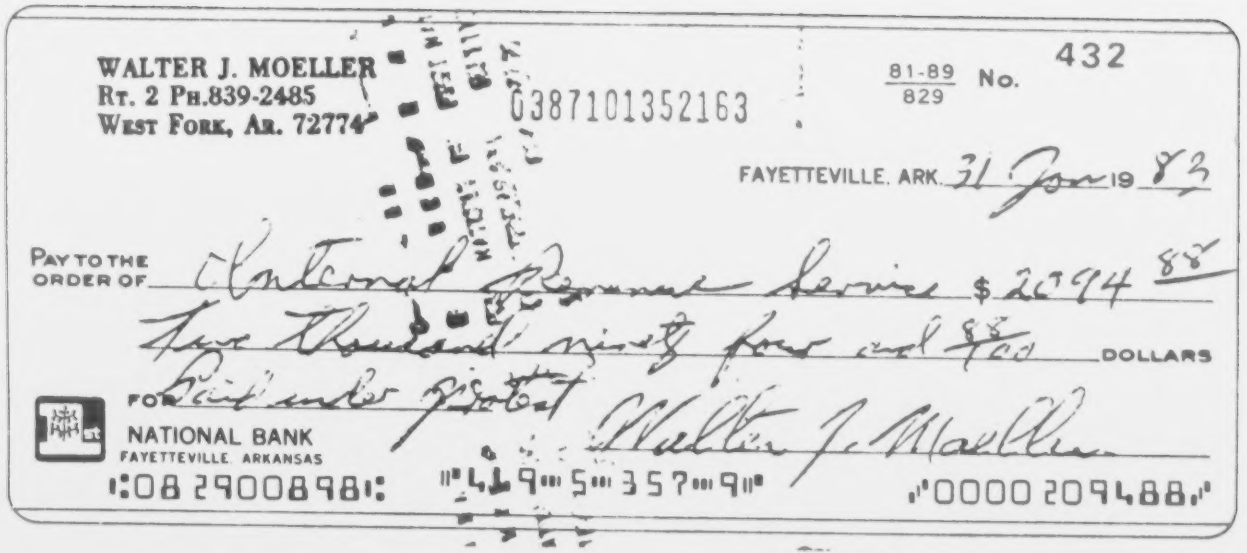
dismiss this action.

This 3rd day of January, 1985.

H. Franklin Waters (Seal)

United States District Judge

Exhibit N



WALTER J. MOELLER
Rt. 2 Ph.839-2485
West Fork, Ar. 72774

0387101352163

81-89 / 829 No. 432

FAYETTEVILLE, ARK. 31 Jan 19 83

PAY TO THE ORDER OF National Resume Service $ 26.94 88

Twenty Thousand ninety four and 88/100 DOLLARS

FOR Printer Proof

Walter J. Moeller

NATIONAL BANK
FAYETTEVILLE, ARKANSAS

:082900898: "419 5 357 9" "0000 209488"

50a

Exhibit O

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION

Article III is quoted in pertinent parts:

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all Cases affecting Ambassadors, other public Ministers and Consuls; - to Controversies to which the United States shall be a party; . . .

Article VI is quoted in pertinent parts:

. . . .

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Text shall ever be required as a Qualification to any Office or public Trust under the Unites States.

Amendment I is quoted in pertinent part:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment IV is quoted in pertinent part:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V is quoted in pertinent part:

. . . . nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; not shall private property be taken for public use, without just compensation.

Amendment VI is quoted in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be

informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII is quoted in pertinent part:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment VIII is quoted in pertinent part:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX is quoted in pertinent part:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X is quoted in pertinent part:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

TITLE 18 U.S.C.

Title 18 U.S.C. § 4 is quoted in pertinent part:

Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the Unites States, shall be fined not more than $500 or imprisoned not more than three years, or both.

Title 18 U.S.C. § 241 is quoted in pertinent part: Conspiracy against rights of citizens

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of nay right or privilege secured by him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured - They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

Title 18 U.S.C. § 242 is quoted in pertinent part:
Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any

inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or life.

Title 18 U.S.C. § 872 is quoted in pertinent parts:

Extortion by officers or employees of the United States: Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined not more than $5,000 or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed $100, he shall be fined not more than $500 or imprisoned not more than one year, or both.

Title 18 U.S.C. § 1001 is quoted in pertinent parts:

Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers

up by any trick, scheme, or devise a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Title 18 U.S.C. § 1018 is quoted in pertinent parts:

Official certificates or writings

Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than $500 or imprisoned not more than one year, or both.

Title 18 U.S.C. § 1621 is quoted in pertinent parts:

Perjury generally

Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he

does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

Title 18 U.S.C. § 1622 is quoted in pertinent parts:

Subornation of perjury

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined not more than $2,000 or imprisoned not more than five years, or both.

TITLE 26 U.S.C.

~~Title~~ 26 U.S.C. § 7214 provides in pertinent parts:

Offenses by officers and employees of the United States:

a. Unlawful acts of revenue officers or agents. - Any officer or employee of the United States acting in connection with any revenue law of the United States -

1. who is guilty of any extortion or willful oppression under color of law; or
2. who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or
3. who with intent to defeat the application of any provision of this title fails to perform any of the duties of his office or employment; or

7. who makes or signs any fraudulent entry in any book, or makes or signs any fraudulent certificate return, or statement; or
8. who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to the Secretary; or
shall be dismissed from office or discharged from employment and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both. The court may in its discretion award out of the fine so imposed an amount, not in excess of one-half thereof, for the use of the informer, if any, who shall be ascertained by the judgment of the court. The court also shall render judgment against the said officer or employee for the amount of damages sustained in favor of the party injured, to be collected by execution.

Title 26 U.S.C. § 7422 provides in pertinent part:

Civil actions for refund.

a. No suit prior to filing claim for refund. - No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and

the regulations of the Secretary established in pursuance thereof.

b. Protest or duress. - Such suit or proceeding may be maintained whether or not such tax, penalty, or sum has been paid under protest or duress.

Title 26 U.S.C. § 7804(b) provides in pertinent parts:

b. Preservation of Existing rights and remedies. - Nothing in Reorganization Plan Numbered 26 of 1950 or Reorganization Plan Numbered 1 of 1952 shall be considered to impair any right or remedy, including trial by jury, to recover any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the internal revenue laws. For the purpose of any action to recover any such tax, penalty, or sum, all statutes, rules, and regulations referring to the collector of internal revenue, the principal officer for the internal revenue district, or the Secretary, shall be deemed to refer to the officer whose act or acts referred to in the proceeding sentence gave rise to such action. The venue of any such action shall be the same as under existing law.

IRS PROCEDURE AND ADMINISTRATION
RULES AND REGULATIONS
§ 301

§301.6203-1 Method of assessment. . . If the taxpayer requests a copy of the record of assessment, he shall be furnished a copy of the pertinent parts

of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

IRS ADMINISTRATIVE PROCEDURE
SUBCHAPTER H - INTERNAL REVENUE PRACTICE
PART 601 - STATEMENT OF PROCEDURAL RULES

§ 601.101 Introduction
(b) Scope. This part sets forth the procedural rules of the Internal Revenue Service respecting all taxes administered by the Service, and supersedes the previously published statements 26 CFR (1949 ed., Part 300-End) Parts 600 and 601) with respect to such procedural rules.

§ 601.102(a)(3)
Taxes of both classes may be contested by first making payment, filing claim for refund, and then bringing suit to recover if the claim is disallowed or no decision is rendered thereon within six months.

§ 601.103(c) Disputed liability - (1)
The taxpayer is given an opportunity to request that the case be considered by an Appeals Office provided that office has jurisdiction (§ 601.106(a)(3). If the taxpayer requests such consideration, the case will be referred to the Appeals Office, which will afford the taxpayer the opportunity for a conference. The determination of tax liability by the Appeals Office is final insofar as the taxpayer's appeal rights within the Service are concerned.

§ 601.105(b)(4) - Conclusion of examination
At the conclusion of an office or field

examination, the taxpayer is given an opportunity to agree with the findings of the examiner. If the taxpayer does not agree, the examiner will inform the taxpayer of the appeal rights.

§ 601.105(b)(5)(viii)(c)(2)(i) Field examination.
If, at the conclusion of an examination, the taxpayer does not agree with the adjustments proposed, the examiner will prepare a complete examination report fully explaining all proposed adjustments. . . . Following such review, the taxpayer will be sent a copy of the examination report under cover of a transmittal (30-day) letter, providing a detailed explanation of the alternatives available, including consideration of the case by an Appeals office, and requesting the taxpayer to inform the district director, within the specified period, of the choice of action.

§ 601.105 (b)(5)(viii)(d)(1)(iv)
. . . .In an unagreed case, the district director sends to the taxpayer a preliminary or "30-day letter" . . . .The 30-day letter is a form letter which states the determination proposed to be made. It is accompanied by a copy of the examiner's report explaining the basis of the proposed determination. . . . The preliminary letter also informs the taxpayer of appeal rights available if he or she disagrees with the proposed determination.
§ 601.106(b) Appeals function
Initiation of proceedings before Appeals.
In any case in which the district director has issued a preliminary or "30-day letter" and the taxpayer requests Appeals consideration and files

a written protest when required (see paragraph (c)(1) of §§ 601.103, (c)(1) and (c)(2) of 601.105 and 601.507) against the proposed determination of tax liability, except as to those taxes described in paragraph (a)(3) of this section, the taxpayer has the right (and will be so advised by the district director) of administrative appeal to the Appeals organization.

§ 601.106(f)(1) Rule I
An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution. Accordingly, an Appeals representative is his or her conclusions of fact or application of the law, shall hew to the law and the recognized standards of legal construction. It shall be his or her duty to determine the correct amount of the tax, with strict impartiality as between the taxpayer and the Government, and without favoritism or discrimination as between taxpayers.

TITLE 28 U.S.C.

§ 144 Bias or prejudice of judge.
Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceedings.

§ 453 Oaths of justices and judges
Each justice or judge of the United States shall take the following oath or

affirmation before performing the duties of his office: "I _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal rights to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God."

§ 455 Disqualification of justice, judge or magistrate.
(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonable be questioned.

§ 1254(1) Courts of appeals; certiorari; certified questions
Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or degree.

§ 1291 Final decisions of district courts.
The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

§ 1331 Federal Question
The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.

§ 1340 Internal revenue; customs duties
The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports on tonnage except matters within the jurisdiction of the Court of International Trade.

§ 1343 Civil rights and elective franchise
(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent.

§ 1346 United States as defendant
(a) the district courts shall have original jurisdiction, concurrent with the United States Claims Court, of:
(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or

any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws.

§ 1652 State laws as rules of decision
The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the Unites States, in cases where they apply.

§ 1653 Amendment of pleadings to show jurisdiction.
Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

§ 1654 Appearance personally or be counsel
In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

§ 2072 Rules of civil procedure
. . . .
Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution.

TITLE 42 U.S.C.

§ 1985 Conspiracy to interfere with civil rights
. . . .
(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the

premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the law, ...in any case of conspiracy set forth in this section, if one or more persons engage therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators

§ 1986 Action for neglect to prevent conspiracy

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 USCS § 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages causes by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action, and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit

of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

THE PARTIES

WALTER J. MOELLER
ROUTE 2
WEST FORK, AR 72774
Pro Se

PETITIONER

vs.

UNITED STATES GOVERNMENT

RESPONDENTS

and
ROSCOE L. EGGERS, JR., Individually
and in his capacity as a public servant
employee of the IRS.
and
JAMES WESTBROOK, Individually
and in his capacity as a public servant
employee of the IRS.
and
PAUL D. WILLIAMS, Individually
and in his capacity as a public servant
employee of the IRS.
and
WILLIAM F. BARLOW, Individually
and in his capacity as a public servant
employee of the IRS.
and
H. CARRADINE, Individually
and in his capacity as a public servant

employee of the IRS.
and
RANDALL HAYNES, Individually
and in his capacity as a public servant
employee of the IRS.
and
S. R. McKEEVER, Individually
and in his capacity as a public servant
employee of the IRS.
and
RICHARD C. VOSKUIL, Individually
and in his capacity as a public servant
employee of the IRS.
and
V. REGAN, Individually
and in his capacity as a public servant
employee of the IRS.
and
M. SORRELLS, Individually
and in his capacity as a public servant
employee of the IRS.
and
GUS McCLANAHAN, Individually
and in his capacity as a public servant
employee of the IRS.
and
TONY TREAT, Individually
and in his capacity as a public servant
employee of the IRS.
and
MILTON A. BARNETT, Individually
and in his capacity as a public servant
employee of the IRS.
and
DAVID COLE, Individually
and in his capacity as a public servant
employee of the IRS.
and
DAVID N. BRADSHAW, Individually
and in his capacity as a public servant
employee of the IRS.
and
MARGARET ROBERTS, Individually
and in her capacity as a public servant

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employee of the IRS.
and
LINDA SISSON, Individually
and in her capacity as a public servant
employee of the IRS.
and
C. B. HARMON, Individually
and in his capacity as a public servant
employee of the IRS.
and
RAYMOND P. KEENAN, Individually
and in his capacity as a public servant
employee of the IRS.
and
UNKNOWN PUBLIC SERVANT EMPLOYEES OF THE INTERNAL
REVENUE SERVICE, et al, whose names are indicated by the records of the Internal Revenue Service, individually and in their capacity as employees of the Internal Revenue Service.

Walter J. Moeller, pro se
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